435 Phil. 870

THIRD DIVISION

[G.R. No. 125027, August 12, 2002]

ANITA MANGILA, PETITIONER, VS. COURT OF APPEALS AND LORETA GUINA, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

This is a petition fore review on certiorari under Rule 45 of the Rules of Court, seeking to set aside the Decision[1] of the Court of Appeals affirming the Decision[2] of the Regional Trial Court, Branch 108, Pasay City. The trial court upheld the writ of attachment and the declaration of default on petitioner while ordering her to pay private respondent P109,376.95 plus 18 percent interest per annum, 25 percent attorney's fees and costs of suit.

The Facts

Petitioner Anita Mangila ("petitioner" for brevity) is an exporter of sea foods and doing business under the name and style of Seafoods Products. Private respondent Loreta Guina ("private respondent" for brevity) is the President and General Manager of Air Swift International, a single registered proprietorship engaged in the freight forwarding business.

Sometime in January 1988, petitioner contracted the freight forwarding services of private respondent for shipment of petitioner's products, such as crabs, prawns and assorted fishes, to Guam (USA) where petitioner maintains an outlet. Petitioner agreed to pay private respondent cash on delivery. Private respondent's invoice stipulates a charge of 18 percent interest per annum on all overdue accounts. In case of suit, the same invoice stipulates attorney's fees equivalent to 25 percent of the amount due plus costs of suit.[3]

On the first shipment, petitioner requested for seven days within which to pay private respondent. However, for the next three shipments, March 17, 24 and 31, 1988, petitioner failed to pay private respondent shipping charges amounting to P109, 376.95.[4]

Despite several demands, petitioner never paid private respondent. Thus, on June 10, 1988, private respondent filed Civil Case No. 5875 before the Regional Trial Court of Pasay City for collection of sum of money.

On August 1, 1988, the sheriff filed his Sheriff's Return showing that summons was not served on petitioner. A woman found at petitioner's house informed the sheriff that petitioner transferred her residence to Sto. Niño, Guagua, Pampanga. The sheriff found out further that petitioner had left the Philippines for Guam.[5]

Thus, on September 13, 1988, construing petitioner's departure from the Philippines as done with intent to defraud her creditors, private respondent filed a Motion for Preliminary Attachment. On September 26, 1988, the trial court issued an Order of Preliminary Attachment[6] against petitioner. The following day, the trial court issued a Writ of Preliminary Attachment.

The trial court granted the request of its sheriff for assistance from their counterparts in RTC, Pampanga. Thus, on October 28, 1988, Sheriff Alfredo San Miguel of RTC Pampanga served on petitioner's household help in San Fernando, Pampanga, the Notice of Levy with the Order, Affidavit and Bond.[7]

On November 7, 1988, petitioner filed an Urgent Motion to Discharge Attachment[8] without submitting herself to the jurisdiction of the trial court. She pointed out that up to then, she had not been served a copy of the Complaint and the summons. Hence, petitioner claimed the court had not acquired jurisdiction over her person.[9]

In the hearing of the Urgent Motion to Discharge Attachment on November 11, 1988, private respondent sought and was granted a re-setting to December 9, 1988. On that date, private respondent's counsel did not appear, so the Urgent Motion to Discharge Attachment was deemed submitted for resolution.[10]

The trial court granted the Motion to Discharge Attachment on January 13, 1989 upon filing of petitioner's counter-bond. The trial court, however, did not rule on the question of jurisdiction and on the validity of the writ of preliminary attachment.

On December 26, 1988, private respondent applied for an alias summons, which the trial court issued on January 19, 1989.[11] It was only on January 26, 1989 that summons was finally served on petitioner.[12]

On February 9, 1989, petitioner filed a Motion to Dismiss the Complaint on the ground of improper venue. Private respondent's invoice for the freight forwarding service stipulates that "if court litigation becomes necessary to enforce collection xxx the agreed venue for such action is Makati, Metro Manila."[13] Private respondent filed an Opposition asserting that although "Makati" appears as the stipulated venue, the same was merely an inadvertence by the printing press whose general manager executed an affidavit[14] admitting such inadvertence. Moreover, private respondent claimed that petitioner knew that private respondent was holding office in Pasay City and not in Makati.[15] The lower court, finding credence in private respondent's assertion, denied the Motion to Dismiss and gave petitioner five days to file her Answer. Petitioner filed a Motion for Reconsideration but this too was denied.

Petitioner filed her Answer[16] on June 16, 1989, maintaining her contention that the venue was improperly laid.

On June 26, 1989, the trial court issued an Order setting the pre-trial for July 18, 1989 at 8:30 a.m. and requiring the parties to submit their pre-trial briefs. Meanwhile, private respondent filed a Motion to Sell Attached Properties but the trial court denied the motion.

On motion of petitioner, the trial court issued an Order resetting the pre-trial from July 18, 1989 to August 24, 1989 at 8:30 a.m..

On August 24, 1989, the day of the pre-trial, the trial court issued an Order[17] terminating the pre-trial and allowing the private respondent to present evidence ex-parte on September 12, 1989 at 8:30 a.m.. The Order stated that when the case was called for pre-trial at 8:31 a.m., only the counsel for private respondent appeared. Upon the trial court's second call 20 minutes later, petitioner's counsel was still nowhere to be found. Thus, upon motion of private respondent, the pre-trial was considered terminated.

On September 12, 1989, petitioner filed her Motion for Reconsideration of the Order terminating the pre-trial. Petitioner explained that her counsel arrived 5 minutes after the second call, as shown by the transcript of stenographic notes, and was late because of heavy traffic. Petitioner claims that the lower court erred in allowing private respondent to present evidence ex-parte since there was no Order considering the petitioner as in default. Petitioner contends that the Order of August 24, 1989 did not state that petitioner was declared as in default but still the court allowed private respondent to present evidence ex-parte.[18]

On October 6, 1989, the trial court denied the Motion for Reconsideration and scheduled the presentation of private respondent's evidence ex-parte on October 10, 1989.

On October 10, 1989, petitioner filed an Omnibus Motion stating that the presentation of evidence ex-parte should be suspended because there was no declaration of petitioner as in default and petitioner's counsel was not absent, but merely late.

On October 18, 1989, the trial court denied the Omnibus Motion.[19]

On November 20, 1989, the petitioner received a copy of the Decision of November 10, 1989, ordering petitioner to pay respondent P109,376.95 plus 18 percent interest per annum, 25 percent attorney's fees and costs of suit. Private respondent filed a Motion for Execution Pending Appeal but the trial court denied the same.

The Ruling of the Court of Appeals

On December 15, 1995, the Court of Appeals rendered a decision affirming the decision of the trial court. The Court of Appeals upheld the validity of the issuance of the writ of attachment and sustained the filing of the action in the RTC of Pasay. The Court of Appeals also affirmed the declaration of default on petitioner and concluded that the trial court did not commit any reversible error.

Petitioner filed a Motion for Reconsideration on January 5, 1996 but the Court of Appeals denied the same in a Resolution dated May 20, 1996.
Hence, this petition.

The Issues

The issues raised by petitioner may be re-stated as follows:

I.

WHETHER RESPONDENT COURT ERRED IN NOT HOLDING THAT THE WRIT OF ATTACHMENT WAS IMPROPERLY ISSUED AND SERVED;

II.

WHETHER THERE WAS A VALID DECLARATION OF DEFAULT;

III.

WHETHER THERE WAS IMPROPER VENUE.

IV.

WHETHER RESPONDENT COURT ERRED IN DECLARING THAT PETITIONER IS OBLIGED TO PAY P109, 376.95, PLUS ATTORNEY'S FEES. [20]

The Ruling of the Court

Improper Issuance and Service of Writ of Attachment

Petitioner ascribes several errors to the issuance and implementation of the writ of attachment. Among petitioner's arguments are: first, there was no ground for the issuance of the writ since the intent to defraud her creditors had not been established; second, the value of the properties levied exceeded the value of private respondent's claim. However, the crux of petitioner's arguments rests on the question of the validity of the writ of attachment. Because of failure to serve summons on her before or simultaneously with the writ's implementation, petitioner claims that the trial court had not acquired jurisdiction over her person and thus the service of the writ is void.

As a preliminary note, a distinction should be made between issuance and implementation of the writ of attachment. It is necessary to distinguish between the two to determine when jurisdiction over the person of the defendant should be acquired to validly implement the writ. This distinction is crucial in resolving whether there is merit in petitioner's argument.

This Court has long settled the issue of when jurisdiction over the person of the defendant should be acquired in cases where a party resorts to provisional remedies. A party to a suit may, at any time after filing the complaint, avail of the provisional remedies under the Rules of Court. Specifically, Rule 57 on preliminary attachment speaks of the grant of the remedy "***at the commencement of the action or at any time thereafter***."[21] This phrase refers to the date of filing of the complaint which is the moment that marks "the commencement of the action." The reference plainly is to a time before summons is served on the defendant, or even before summons issues.

In Davao Light & Power Co., Inc. v. Court of Appeals,[22] this Court clarified the actual time when jurisdiction should be had:

> "It goes without saying that whatever be the acts done by the Court prior to the acquisition of jurisdiction over the person of defendant - issuance of summons, order of attachment and writ of attachment - these do not and cannot bind and affect the defendant until and unless jurisdiction over his person is eventually obtained by the court, either by service on him of summons or other coercive process or his voluntary submission to the court's authority. Hence, when the sheriff or other proper officer commences implementation of the writ of attachment, it is essential that he serve on the defendant not only a copy of the applicant's affidavit and

> attachment bond, and of the order of attachment, as explicitly required by Section 5 of Rule 57, but also the summons addressed to said defendant as well as a copy of the complaint xxx." (Emphasis supplied.)

Furthermore, we have held that the grant of the provisional remedy of attachment involves three stages: first, the court issues the order granting the application; second, the writ of attachment issues pursuant to the order granting the writ; and third, the writ is implemented. For the initial two stages, it is not necessary that jurisdiction over the person of the defendant be first obtained. However, once the implementation of the writ commences, the court must have acquired jurisdiction over the defendant for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. Any order issuing from the Court will not bind the defendant.[23]

In the instant case, the Writ of Preliminary Attachment was issued on September 27, 1988 and implemented on October 28, 1988. However, the alias summons was served only on January 26, 1989 or almost three months after the implementation of the writ of attachment.

The trial court had the authority to issue the Writ of Attachment on September 27 since a motion for its issuance can be filed "at the commencement of the action." However, on the day the writ was implemented, the trial court should have, previously or simultaneously with the implementation of the writ, acquired jurisdiction over the petitioner. Yet, as was shown in the records of the case, the summons was actually served on petitioner several months after the writ had been implemented.

Private respondent, nevertheless, claims that the prior or contemporaneous service of summons contemplated in Section 5 of Rule 57 provides for exceptions. Among such exceptions are "where the summons could not be served personally or by substituted service despite diligent efforts or where the defendant is a resident temporarily absent therefrom x x x." Private respondent asserts that when she commenced this action, she tried to serve summons on petitioner but the latter could not be located at her customary address in Kamuning, Quezon City or at her new address in Guagua, Pampanga.[24] Furthermore, respondent claims that petitioner was not even in Pampanga; rather, she was in Guam purportedly on a business trip.

Private respondent never showed that she effected substituted service on petitioner after her personal service failed. Likewise, if it were true that private respondent could not ascertain the whereabouts of petitioner after a diligent inquiry, still she had some other recourse under the Rules of Civil Procedure.

The rules provide for certain remedies in cases where personal service could not be effected on a party. Section 14, Rule 14 of the Rules of Court provides that whenever the defendant's "whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation x x x." Thus, if petitioner's whereabouts could not be ascertained after the sheriff had served the summons at her given address, then respondent could have immediately asked the court for service of summons by publication on petitioner.[25]